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SETTLEMENT AGREEMENT, RELEASE, AND COVENANT NOT TO SUE

This Settlement Agreement, Release, and Covenant Not To Sue (hereinafter, the "Agreement"), is made this 26th day of January, 2004 by, between and among Franklin Place Partners, LLC, a Massachusetts limited liability company with a principal place of business of 178 Great Road, Acton, Massachusetts 01720, and its successors and assigns ("Franklin Place"); the Town of Acton, acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 (the "Board of Selectmen"); and the citizens and residents of the Town of Acton listed as signatories to this Agreement below (collectively, the "Neighbors").

WITNESSETH:

WHEREAS, Franklin Place filed an application for a comprehensive permit under Chapter 40B, Sections 20 through 23 of the Massachusetts General Laws on or about April 4, 2003, and the Acton Zoning Board of Appeals (the "ZBA") opened a public hearing on said application on May 8, 2003;

WHEREAS, Franklin Place's comprehensive permit application sought approval of a 32-unit condominium development on approximately 4.9 acres of land located at 520 Main Street, Acton, Massachusetts (the "Project");

WHEREAS, Franklin Place holds a purchase and sale agreement with Mr. William Balduff to acquire the real property located at 520 Main Street, which is the subject of the comprehensive permit application (the "Property"), which agreement entitles Franklin Place to purchase and acquire the Property;

WHEREAS, the ZBA held nine sessions of the public hearing, and closed the public hearing on November 21, 2003;

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WHEREAS, the Board of Selectmen and the Neighbors objected to the proposed density of the Project (32 units on 4.9 acres), and recommended that Franklin Place significantly reduce the density of the Project;

WHEREAS, Franklin Place is willing to reduce the density of the Project to twelve units in six two-family duplex-style homes, of which three units shall be designated for sale to, and occupancy by, households earnings no greater than 80% of the area median income (the "Revised Project"), to be developed substantially in accordance with the revised conceptual plan(s) attached hereto as Exhibit A and engineering drawings to be developed substantially in accordance therewith (the "Revised Plan") and as set forth in this Agreement;

WHEREAS, the Board of Selectmen's and the Neighbors' are willing to support approval of the Revised Project; and

WHEREAS, all parties hereto are willing to covenant not to appeal or otherwise challenge the issuance of a comprehensive permit and any state or local permits that may be necessary to construct the Revised Project.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Franklin Place, the Board of Selectmen, and the Neighbors agree as follows:

1. On or before February 27, 2004, Franklin Place shall deliver to the Acton Board of Appeals a request to amend its pending application to a revised application for a comprehensive permit for the Revised Project. Franklin Place shall submit to the ZBA (a) sufficient information on the Revised Project to conform to the application requirements for a comprehensive

permit, (b) an identification of all necessary waivers from the ZBA for the Revised Project, and (c) a Consent to Re-Open Public Hearing and Conduct Further Proceedings in the form attached hereto as Exhibit B.

2. Franklin Place, the Board of Selectmen, and the Neighbors agree to request expedited approval with conditions by the Board of Appeals of a comprehensive permit for the Revised Project substantially in the form attached hereto as Exhibit C.
3. Franklin Place agrees to the following terms and conditions of development, which shall be imposed as conditions to the comprehensive permit:
 - (a) No structures shall be built, and no grading or land alteration shall occur, within 100 feet of the stream as shown on the Revised Plan attached as Exhibit A.
 - (b) With the exception of the structure located closest to Main Street and the detention basin adjacent to Main Street, both as shown on the Revised Plan, the Revised Project shall comply with the 50-foot no-disturbance zone and the 75-foot no-build zone requirements in the Acton Wetlands Protection Bylaw.
 - (c) All limits of clearing, including identification of wetland resources shall be clearly marked on the engineered site development plans and located on-the-ground using delineation methodology acceptable to the Town. With the

exception of land fronting on Main Street (where clearing may occur to the property boundary in certain areas such as in the vicinity of the driveway and the storm water detention area) and land abutting the easterly property line, and subject to the wetland setbacks set forth above, no grading, vegetative disturbance or earth work shall occur within 20' of any property boundary. Once the project is constructed, the limits of clearing shall be clearly marked and identified on the locus by use of boulders or other similar permanent markers acceptable to the Town.

- (d) No structure shall be built with a front elevation more than two stories as shown on the Revised Plan's elevation depiction attached hereto as Exhibit A.
- (e) The common area landscaping shall be maintained in perpetuity by the condominium association. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
- (f) All refinements or changes to the Revised Plan after the comprehensive permit has been issued shall be made part of the ZBA's record in this matter.
- (g) No dwelling unit in the Revised Project shall contain more than three bedrooms, as "bedroom" is defined by the Acton Board of Health's regulations or by 310 CMR §15.00 (Title

V), whichever is stricter. The condominium documents for the Revised Project shall contain a restriction prohibiting any dwelling unit from containing more than three bedrooms.

- (h) Other than as stated in this Agreement and in the final comprehensive permit decision issued by the Board of Appeals, all local bylaws and regulations shall be adhered to, and the powers and jurisdiction of all local boards and commission shall remain in full force and effect in a manner consistent with the Chapter 40B process. In interpreting this Agreement, it is the collective intent of the parties that the Revised Project shall conform to local standards to the extent reasonably practical but that the Board of Appeals shall retain its authority under Chapter 40B to waive such standards as reasonably necessary and appropriate to effectuate the intent of this Agreement for the construction of the Revised Project on the site.

4 If on or before March 31, 2004 (or such further time as Franklin Place and the ZBA may agree), the ZBA issues a comprehensive permit for the Revised Project substantially as set forth in Exhibits A and C, and this Agreement, then:

- (a) Franklin Place shall not appeal the comprehensive permit;
- (b) The Neighbors, individually and collectively, shall not

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appeal the comprehensive permit;

- (c) The Neighbors, individually and collectively, shall not appeal any decision made by any other state or local permitting authority approving the development of the Revised Project as set forth in Exhibits A and C (and if any such appeal has been taken prior to the date of this Agreement, shall thereupon forthwith dismiss that appeal);
- (d) Franklin Place shall acquire the Property and commence construction of the Revised Project within three years of the effective date of the comprehensive permit as provided under 760 CMR 31.08(4);
- (e) Franklin Place and its successors and assigns shall not change, alter, or re-design the Revised Project in such way that a formal amendment of the comprehensive permit would be required under 760 CMR 31.03(3) due to the change being “substantial;” and
- (f) The Revised Project shall be built in conformity with the comprehensive permit, and the Property shall not be further subdivided or developed except as may be permitted by the ZBA as an “insubstantial change” under 760 CMR 31.03(3).

5. In the event that Franklin Place cannot obtain necessary permits or approvals from agencies or institutions of the state or federal government

for a 12-unit development, but determines in its sole discretion to apply for and obtain said permits or approvals for a smaller 40B development on the site, the Neighbors agree to support any changes to the Revised Project and the Revised Plan that reduce the number of units in the development so long as the development remains consistent in all other respects with the approved comprehensive permit decision and this Agreement. The Neighbors agree to refrain from taking any action to promote the reduction in the number of units below twelve unless and until Franklin Place shall apply for such a reduced number of units below twelve.

6. If the ZBA denies a comprehensive permit for the Revised Project, or approves the Revised Project with conditions that are not in substantial conformity with Exhibits A and C and this Agreement, or if there is an appeal from an approval, then:
 - (a) Franklin Place may pursue its original comprehensive permit application for the Project at 32 units and request the ZBA to issue a written decision on said application; and
 - (b) The Neighbors, individually and/or collectively, may appeal any decision, permit or approval for the original Project or a version thereof having fewer than 32 but greater than 12 units (if and to the extent they have standing to do so).
7. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

8. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor) may from time to time designate by written notice:

Franklin Place:
Franklin Place Partners, LLC
178 Great Road
Acton, Massachusetts 01720

Board of Selectmen:
Town of Acton
472 Main Street
Acton, Massachusetts 01720

Neighbors:
Jon Witten, Esq.
Daley & Witten
156 Duck Hill Road
Duxbury, MA 02332

9. Participating Neighbors may sign this Agreement in multiple counterparts and the signature pages shall be collated into one original.

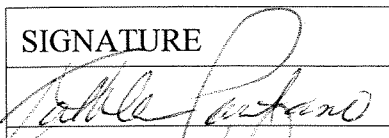



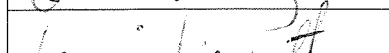
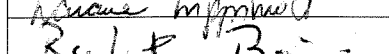
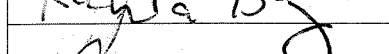
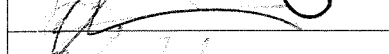
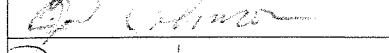
Duly authorized and executed as a sealed instrument as of the date first written
above.

FRANKLIN PLACE PARTNERS, LLC

By: _____
Ronald Peabody, Manager

TOWN OF ACTON
BOARD OF SELECTMEN

NEIGHBORS:

SIGNATURE	NAME (PRINTED)	ADDRESS
	Kathleen Pantano	95 Nagog Hill Rd
	MICHAEL S. PATTEN	87 NAGOG Hill ROAD
	Timothy W. Whelan	33 Nagog Hill Rd.
	Qizhou Zhang	7 Hemlock Ln
	LARAIN LIPPINCOTT	8 Hemlock Lane
	Roberta Bizier	4 Hemlock Lane
	LISAO BRANDON	12 HEMLOCK LANE
	James S. Johnson	15 Hemlock Lane
	PAWAN NAGAR	20 Hemlock La

NEIGHBORS:

SIGNATURE	NAME (PRINTED)	ADDRESS
<i>Anne M. Jones</i>	Anne Jones	4 Creenwood Ln
<i>John H. Toulmin</i>	John H. Toulmin	49 GREENWOOD LN.
<i>Edw. V. York II</i>	EDWARD L. YORK II	6 GREENWOOD LN.
<i>Maureen S. Plitt</i>	Maureen Plitt	9 Hemlock Ln.
<i>Phillip Oster</i>	Phillip Osterhardt	9 Hemlock Ln.
<i>Maureen Brusie</i>	Maureen Brusie	13 Hemlock Ln
<i>Charles E. Brusie</i>	Charles E. Brusie	13 Hemlock Ln.
<i>Thomas B. Pell</i>	Thomas B. Pell	511 Main St.
<i>Robert E. Ficken</i>	Robert E. Ficken	512 Main St.

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NEIGHBORS:

SIGNATURE	NAME (PRINTED)	ADDRESS
<i>Galina V. Fickey</i>	Galina V. Fickey	512 Main St.
<i>Evelyn Olschewski</i>	Evelyn Olschewski	77 N. 40th Hill Rd.
<i>Mary Steigman-Landoff</i>	MARY STEIGMAN-LANDOFF	16 Hamblet W
<i>John Pantano</i>	JOHN PANTANO	95 N. 40th Hill Rd.